IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO. 6219 OF 2004

Shakinabanu w/o Sayyed Javed & ors... Petitioners

versus

Shakil Ahmed Adam Katote .. Respondent

...

Mr.C.R. Dalvi with Mr.K.S. Bhadti for the petitioner.

Mr.A.K. Abhyankar with Mr.G.M. Khembete for the respondent.

CORAM : D.G. KARNIK, J

DATED : 1st September 2004.

P.C:-

1. Heard the learned counsel for the parties.

2. This Writ Petition is filed by a tenant against whom a decree for possession has been passed by appellate Court on the ground of reasonable and bonafide requirement of the respondent landlord and

his family.

3. The suit premises originally belong to Khatijabai who died in the year 1986 leaving behind him two sons, a family of a pre-deceased son and a daughter who succeeded to her estate. The present Writ Petition arises out of a suit filed by one of the grandsons i.e. son of a pre-deceased son of Khatijabai.

4. The evidence on record shows that there are five married couples in the family. They were in possession of only two rooms when the suit was filed. Shri Dalvi, learned counsel for the petitioner submits that two additional rooms were constructed during the pendency of the rooms and therefore, the need has been met. The fact of construction of two additional rooms only shows that the need was genuine and they needed the additional premises. Taking into consideration the fact that there are presently only four rooms in possession of the family of the respondent and five married couples in the family along with other members, it cannot be said that the need is fulfilled. The view taken by the appellate Court is possible and needs no interference.

5. Shri Dalvi contended that the respondent was only one of the heirs of deceased Khatijabai. He has filed the suit without joining other heirs and co-owners as parties to the suit. The rent was recovered by other co-owners and not by the respondent. The rent receipts were also not issued by the respondent. Hence, respondent was not a landlord and the suit was not maintainable. He relies upon the following passage appearing at page 32 of Mahomedan law by Mulla, 15th Edition.

> **"Representation of deceased's estate** - The theory of representation is not known to the Mahomedan law. Under its provisions of estate of a deceased present elsewhere upon his heirs at the moment of his death. The estate vests immediately in each heir in proportion to the share ordained by Mohamedan law. As the interest of each heir is separate and distinct, one of a number of heirs cannot be treated as representing the others (n)."

It is settled position that under a Rent Act, a co-owner is entitled to file a suit for possession without joining other co-owners as parties to the suit. It is not even contended that other co-owners have not consented to the filing of the

suit by the respondent. In the circumstances, the contention that the respondent is not a landlord and is not entitled to file a suit is rejected.

6. No other point was urged.

7. Petition rejected.

8. At the request of the learned counsel for the petitioner, it is ordered that the decree shall not be executed for a period of 8 weeks on condition that the petitioners shall not part with the possession nor create any third party interests in the suit premises.

D.G. KARNIK, J